# Polis DiRaja Malaysia v Keong Mei Cheng Audrey

HIGH COURT (KUALA LUMPUR) — CRIMINAL APPLICATION NO 44–16–94
SYED AHMAD IDID J
15 JULY 1994

***Criminal Procedure*** *— Police investigation — Investigation diary — Whether grounds for continued detention must be supplied in the form of a diary — Whether affidavit sufficient — Whether police must report to public prosecutor — Criminal Procedure Code (FMS Cap 6) s 117(i) & Second Schedule Form XXVI*

***Criminal Procedure*** *— Arrest — Without warrant — Whether unlawful if grounds of arrest not informed — Rank of arresting officer — Criminal Procedure Code (FMS Cap 6) ss 108(iii), 109(i) & 110*

***Criminal Procedure*** *— Arrest — Grounds of arrest — Wife of accused — Refusal to co-operate with police — Whether sufficient*

***Criminal Procedure*** *— Police investigation — Procedure applicable under s 117 — Registrar's Circular No 1 of 1979 — Criminal Procedure Code (FMS Cap 6) s 117*

The respondent's husband was charged with criminal breach of trust ('CBT') under s 409 of the Penal Code (FMS Cap 45) ('the PC'). The respondent was alleged to have assured the police that she would surrender all share certificates and cash of RM70,000 (the subject matter of the offence allegedly committed by her husband) but failed to do so. She was subsequently arrested but was not tried nor charged with any offence. According to the police, it was the respondent's unco-operative attitude which gave rise to a reasonable suspicion that the respondent had abetted her husband in committing CBT. This statement was affirmed in a police officer's affidavit but was not in the form of a diary envisaged by s 117(i) of the Criminal Procedure Code (FMS Cap 6) ('the CPC').

The police applied to the magistrates' court to continue detaining the respondent for further questioning. However, the registrar ordered the release of the respondent from police custody and held that the arrest of the respondent was made without a warrant and she was not told of the reasons for her detention. The police have applied for a revision of the order. The issues before the court are: (i) whether the respondent's arrest and detention were legal; and (ii) whether the registrar's order was proper.

**Held**, dismissing the application and confirming the registrar's order:

(1) A diary containing details of the proceedings in the investigation referred to in s 117(i) of the CPC must be supplied to the magistrate under s 117. As a matter of law, it must be in the form specified by s 119 and must be replete with grounds indicating that the information against the accused is well founded. In this

A case, the police did not transmit a copy of the diary to the magistrate.

(2) It is also incumbent upon the police to report to the public prosecutor on investigations under Ch XIII of the CPC through the use of Form XXVI in the Second Schedule. This was not done.

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(3) The offence of CBT under s 409 is a seizable offence, ie a police officer may ordinarily arrest without warrant. In such a case, the police must inform the person arrested of the grounds of arrest and, under ss 108(iii), 109(i) and 110 of the CPC, the power to arrest is confined to a police officer not below the rank of sargeant. Here, the respondent's arrest had been effected by a constable and she had not been informed of the reasons for her arrest.

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(4) Although the court has jurisdiction to try an accused notwithstanding that his arrest may have been illegal, this was not applicable as the registrar was not 'trying' the respondent at the time.

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(5) There must always be some lawful basis for arrest and detention including a clear nexus between the suspect and the offence. The law did not allow an arrest based on the respondent's status as wife of the accused or on the anger of the police merely because she did not co-operate with them.

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**Per curiam**:

An application under s 117 should be made in duplicate and registered in court on the date it is filed, and recorded in serial numbers (ie one file for each police district or station) for each year. All court records and documents, eg diary and notes of proceedings, must remain in the court whether the application is approved or rejected. The police officer must report back to the magistrate on the date and time the accused (or remanded) person is released or granted bail in the form specified in the Registrar's Circular No 1 of 1979. The magistrate should KIV his file to the relevant date of each order and if the release order is not received from the OCPD, the magistrate must inquire into the matter. The magistrate must also send a monthly return of all such orders and inquiries to the High Court judge.

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**[Bahasa Malaysia summary**

Suami responden telah dituduh atas kesalahan pecah amanah jenayah ('PAJ') di bawah s 409 Kanun Keseksaan (FMS Bab 45) ('KS'). Responden dikatakan telah memberi jaminan kepada pihak polis bahawa beliau akan menyerahkan semua sijil saham dan wang tunai sebanyak RM70,000 (isi perkara kesalahan yang dikatakan telah dilakukan oleh suaminya) tetapi gagal berbuat demikian. Beliau kemudiannya telah ditangkap tetapi tidak dibicara atau dituduh atas sebarang kesalahan. Mengikut pihak polis, tingkah laku responden yang tidak memberi kerjasama itu telah menimbulkan syak wasangka

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yang munasabah bahawa beliau telah bersubahat dengan suaminya untuk melakukan PAJ tersebut. Pernyataan ini telah diesahkan di dalam afidavit seorang pegawai polis tetapi tidak didapati dalam bentuk diari yang dibayangkan oleh s 117(i) Kanun Acara Jenayah (FMS Bab 6) ('KAJ').

Pihak polis telah memohon kepada mahkamah majistret untuk melanjutkan penahanan responden supaya meneruskan soal siasatannya. Bagaimanapun, pendaftar telah memerintahkan pelepasan responden dari jagaan polis dan memutuskan bahawa penangkapan responden telah dibuat tanpa waran dan beliau tidak diberitahu sebab mengapa beliau ditahan. Polis telah memohon untuk suatu penyemakan perintah itu. Isu di hadapan mahkamah adalah: (i) sama ada penangkapan dan penahanan responden itu sah; dan (ii) sama ada perintah pendaftar itu betul.

**Diputuskan**, menolak permohonan itu dan mengesahkan perintah pendaftar itu:

(1) Suatu diari yang mengandungi butir-butir mengenai prosiding penyiasatan yang dirujuk di dalam s 117(i) KAJ mesti diberikan kepada majistret di bawah s 117. Mengikut undang-undang, ia mesti disediakan dalam bentuk yang ditetapkan oleh s 119 dan mesti mengandungi alasan lengkap yang menunjukkan bahawa maklumat terhadap tertuduh mempunyai asas yang kukuh. Di dalam kes ini, polis tidak menghantar satu salinan diari itu kepada majistret.

(2) Pihak polis juga diwajibkan memberi laporan kepada pendakwa raya mengenai siasatan di bawah Bab XIII KAJ melalui Borang XXVI di dalam Jadual Kedua. Ini tidak dilakukan.

(3) Kesalahan PAJ di bawah s 409 adalah suatu kesalahan boleh tangkap, iaitu seorang pegawai polis biasanya boleh menangkap tanpa waran. Di dalam kes sedemikian, pihak polis mesti memberitahu orang yang ditangkap itu alasan tangkapannya dan, di bawah ss 108(iii), 109(i) dan 110 KAJ, kuasa untuk menangkap terhad kepada seorang pegawai polis yang sekurang-kurangnya berpangkat sarjan. Di sini, penangkapan responden telah dilakukan oleh seorang konstabel dan beliau tidak diberitahu sebab untuk penangkapannya.

(4) Walaupun mahkamah mempunyai bidang kuasa untuk membicarakan seseorang tertuduh meskipun penangkapannya mungkin tidak sah, ini tidak terpakai kerana pendaftar tidak 'membicarakan' responden pada masa itu.

(5) Mesti selalu terdapat alasan yang sah untuk penangkapan dan penahanan termasuk suatu hubungan jelas di antara orang yang disyaki dan kesalahan itu. Undang-undang tidak membenarkan suatu penangkapan yang berdasarkan taraf responden sebagai isteri tertuduh atau kemarahan pihak polis semata-mata kerana beliau tidak bekerjasama dengan mereka.

**Per curiam:**

Sesuatu permohonan di bawah s 117 seharusnya dibuat dalam dua salinan dan didaftarkan di mahkamah pada tarikh ia difailkan, dan dicatatkan mengikut nombor bersiri (iaitu satu nombor bagi setiap daerah atau balai polis) untuk setiap tahun. Semua rekod dan dokumen, misalnya diari dan nota prosiding, mesti disimpan di mahkamah sama ada permohonan itu diluluskan atau ditolak. Pegawai polis itu mesti melaporkan semula kepada majistret mengenai tarikh dan masa bila tertuduh (atau orang yang ditahan) dilepaskan atau diberi jaminan di dalam bentuk yang ditetapkan di dalam Pekeliling Pendaftar No 1 Tahun 1979. Majistret seharusnya mengambil ingat tentang fail itu pada tarikh yang relevan di dalam perintah itu dan jika perintah pelepasan itu tidak diterima dari Ketua Polis Daerah, majistret mesti menyiasat perkara itu. Majistret juga mesti menghantar suatu penyata bulanan berkenaan dengan semua perintah dan siasatan sedemikian kepada hakim Mahkamah Tinggi.]

**Notes**

For cases on arrest, see 5 *Mallal's Digest* (4th Ed) paras 422–461; [1992] Mallal's Digest 757.

For cases on police investigations, see 5 *Mallal's Digest* (4th Ed) paras 1704–1795; [1992] Mallal's Digest 785–789.

**Cases referred to**

*Abbassy v Commissioner of Police of the Metropolis* [1990] 1 All ER 193; [1990] 1 WLR 385 (refd)

*Chapman v DPP* (1989) 89 Cr App R 190 (refd)

*Christie & Anor v Leachinsky* [1947] 1 All ER 567 (folld)

*Gun Kim Luu v PP* [1961] MLJ 35 (refd)

*Hashim bin Saud v Yahaya bin Hashim & Anor* [1977] 1 MLJ 259 (refd)

*Jayaraman & Ors v PP* [1982] 2 MLJ 273 (folld)

*Kynaston v DPP* (1988) 87 Cr App R 200 (refd)

*Loo Fang Siang v Ketua Polis Daerah, Butterworth* [1981] 2 MLJ 272 (refd)

*Maja Anak Kus v PP* [1985] 1 MLJ 311 (refd)

*Ooi Ah Phua v Officer-in-Charge, Criminal Investigation, Kedah/Perlis* [1975] 2 MLJ 198 (refd)

*PP v Kok Khee* [1963] MLJ 362 (refd)

*PP v Leonard* [1960] MLJ 13 (refd)

*R v Telfer* (1976) Crim LR 562 (refd)

*Ramli bin Salleh v Inspector Yahya bin Hashim* [1973] 1 MLJ 54 (refd)

*Saul Hamid v PP* [1987] 2 MLJ 736 (refd)

*Saw Kim Hai v R* [1956] MLJ 21 (distd)

*Shaaban & Anor v Chong Fook Kam & Ors* [1969] 2 MLJ 219 (folld)

**Legislation referred to**

Federal Constitution art 5(3)

Criminal Procedure Code (FMS Cap 6) ss 2, 15, 23, 62, 107, 108, 109, 110, 111, 117, 119, 133, 135, Ch XIII, Second Schedule Form XXVI
Penal Code (FMS Cap 45) ss 409, 411, 414

*Zainal Adzam bin Abdul Ghani* (Deputy Public Prosecutor) for the applicant.

*Yusuf Khan bin Ghows Khan* (*Yusuf Lee Pathma & Marbeck*) for the respondent.

**Syed Ahmad Idid J:**

*Preliminary point*

The respondent's counsel raised an issue in respect of the aggrieved party, ie the applicant. Was it the public prosecutor as stated in the 'usul'? The learned DPP conceded that the applicant should be the police with reference to s 117 of the Criminal Procedure Code (FMS Cap 6) ('the CPC'). Accordingly the correction is made.

*Through the 'notis usul'*

This application is for the revision of the order made by the registrar of the magistrates' court, which order released the respondent from police custody. The registrar had, on 12 May 1994, stated that the arrest of the respondent was made without a warrant and that the suspect (or respondent here) was not told of the reasons for her detention.

The public prosecutor through the deputy public prosecutor Encik Zainal Adzam bin Abdul Ghani, in his 18-page submission made strenuous efforts to back the actions earlier taken by the police.

At this stage, the respondent is not tried nor has she been charged for any offence in a court of law. The two issues here are:

(a) whether her 'arrest' (or tangkapan) and 'detention' by the police (or the Commercial Crime Investigation Division) purportedly made on 11 May 1994 at about 10.20am within the Kuala Lumpur court precincts were legal and according to the law; and

(b) whether the registrar's order was proper.

Perusing the affidavits filed by Insp Nagendra Rao a/l Babojorow, ASP Latt Mazura bte Mansur and woman corporal Hamidah bte Abdul Rahman, for the applicant, and by the respondent herself, her husband, Lim Chin Teik, on 23 May 1994, and a corrective affidavit on 30 May 1994, her solicitor, Lee Lim Huat and Lt Col Ahmad bin Daud who is presently doing practical training in a law firm, it is obvious certain divergence exists.

*Finding of facts*

On 14 April 1994, the police received a complaint from Zalik Securities Sdn Bhd vide Jalan Bandar police report No 6191/94. An investigation

A was conducted and the police concluded that Lim Chin Teik (respondent's husband) had committed breach of trust of RM890,973.36 from Zalik where he worked as a stock broking manager.

On 5 May 1994, the respondent's husband was charged (under s 409 of the Penal Code (FMS Cap 45) ('the PC')) vide Sessions Court 62–55–
B 94. He pleaded not guilty and was released on bail of RM500,000.

Lim Chin Teik in his affidavit (para 19) told the police 'my wife kept the share scrips and money'. The respondent turned up at the police headquarters on 29 April 1994 and gave her word that she would surrender all share certificates including 35 lots Mulpha, 20 lots Mechmar, 48 lots
C MCB and 2 lots Public Bank and cash of RM70,000 but she did not do so. And she did not return to Bukit Aman thereafter.

On 11 May 1994, when the police met her at Block K13, the police 'arrested' ('menangkap') her. Police report No Sentul 4311/94 was lodged by Hamidah bte Abdul Rahman.

D The next day on 12 May 1994, Insp Nagendra Rao submitted an application to continue detention of the respondent under s 117 of the CPC. The application was made on Police 51B meant as 'Kertas butir-butir penyiasatan' but in reality this was turned into a letter addressed to the magistrate in which the inspector provided these two reasons:

E (1) to recover certain assets; and

(2) to question the respondent,

and added that the respondent was believed to have destroyed all the share scrips.

It is to be noted that the police at that time neither suspected nor
F entertained any thoughts that the respondent was involved in the commission of any offence or crime. The learned DPP only in his submission in court broached on the possibility ('mungkin') that the respondent abetted her husband under s 109 read with s 409 of the PC or that she dishonestly received stolen property (s 411) or assisted in concealment of
G stolen property (s 414) (was appropriate action not taken under s 62 (but perhaps not under s 63) of the CPC?).

In so far as the respondent's husband (Lim Chin Teik) is concerned, s 409 of the PC under which he is charged spells out 'Criminal breach of trust by public servant or by banker, merchant or agent' (punishable by imprisonment for up to 20 years and shall also be liable to fine). The
H article, 'Criminal Breach of Trust' [1994] 2 MLJ xcvii is instructive.

*Can a suspect be arrested without a warrant?*

According to the First Schedule of the CPC the offender (and this must necessarily include a suspect) charged/chargeable under s 409 of the PC
I may be arrested without warrant but a warrant shall ordinarily issue in the first instance. The offence is neither bailable nor compoundable. Anyone who abets the commission of any offence under the Penal Code may be arrested with or without warrant depending on the offence so abetted.

The First Schedule explains that its third column (whether the police may ordinarily arrest without warrant or not) is not intended in any way to restrict the powers of arrest without warrant which may be lawfully exercised by police officers, and I need add, only in fit and proper cases.

*Is the offence of CBT under s 409 seizable or non-seizable?*

From what I have described above, such offence is seizable. That being so, it is a case in which a police officer may ordinarily arrest without warrant. By s 109 of the PC, any police officer not below the rank of sergeant may exercise all or any of the special powers in relation to police investigations. Where such officer has reason to suspect the commission of a seizable offence, he shall forthwith send a report of the same to the public prosecutor, whether or not he decides to investigate it himself or to deputize such duty.

*Requirements of s 117*

Let me now go to Pt V Ch XIII of the CPC which deals with 'Information to the police and their powers to investigate' within which s 117 appears. See *PP v Leonard* [1960] 26 MLJ 13 at pp 14–15 where it was held that:

> An information is a statement relating to the commission of an offence made to a police officer under s 107 of the Code and a complaint is an allegation made to a magistrate with a view to his taking action under the Code.

See also s 2(1) of the CPC.

Section 117 requires that:

(a) where any person is arrested and detained;

(b) investigation cannot be completed within 24 hours;

(c) there are grounds for believing that the accusation or information is well founded; and

(d) the police officer making the investigation must forthwith:

  (i) transmit (to a magistrate) a copy of the entries in the diary (hereinafter prescribed) (see s 119 CPC); and

  (ii) at the same time produce the accused before such magistrate.

In the present case, the information relating to the commission of the offence had been reduced into writing in accordance with s 107 of the CPC when Report No 6191/94 was lodged. In *Loo Fang Siang v Ketua Polis Daerah, Butterworth* [1981] 2 MLJ 272, it was held that a police report under s 107 is a 'public document'.

According to ASP Latt Mazura, 'tingkah laku responden yang tidak memberi kerjasama itu telah menimbulkan syak wasangka yang munasabah bahawa beliau telah bersubahat dengan suaminya Lim Chin Teik melakukan pecah amanah jenayah tersebut'. Upon that, the police sprang into action against the wife, the respondent here (note that a search without warrant is permitted but see s 62 of the CPC and the *Utusan Malaysia*, 14 June

A 1994 news item, 'Bapa eksekutif ditahan untuk selesai kes'). It is to be noted however that this was only affirmed in the ASP's affidavit dated 18 May 1994 but not in the form of a diary which is envisaged by s 117(1) of the CPC relating to the case being investigated.

B *The format of the diary*

The diary, in my opinion, has to be a diary (definition: 'buku catatan, buku harian') and in it must be set forth:

(a) the time at which the order, if any, for investigation reached the officer (and it is helpful to cite the substance of the order and, where
C possible, its objective);

(b) the time at which he (or she) began and closed the investigation (and the dates/times of occurrences and activities);

(c) the place or places visited by him (or her); and

(d) a statement of the circumstances ascertained through his/her
D investigation.

These details provide the true *proceedings in the investigation* in compliance with what is required by s 119(1) of the CPC. A copy of this is what the officer must supply the magistrate under s 117. This is to obviate the necessity of the magistrate having to examine the complainant and recording
E the examination (see Ch XV and s 133; compare s 117(3) with s 135(2) of the CPC). So I have at this stage to say that the police in this case did not transmit to the magistrate a copy of the proper entries in the diary. This goes against the requirements of s 117. How then could the magistrate (or registrar in our case) make any decision to continue detention of the
F respondent? As a matter of law, not only must the diary be in the form specified by s 119 of the CPC but it must also be replete with grounds indicating that the information against the accused (or respondent) is well founded. It is incumbent upon the police to report to the public prosecutor on investigations under Ch XIII of the CPC through the use of Form XXVI in the Second Schedule. There was no evidence that this was done.

G Anything short of that again is not acceptable as otherwise the police will be on a frolic of their own and citizens and subjects (and foreigners) can be in grave danger of losing their liberty if not their limb. The court must always be vigilant to guard against abuse of powers by any and every activity just so that our nation continues to be respected for justice and fair
H play.

*Was the arrest legal?*

Even assuming that the police had prepared the diary correctly and had submitted the copy to the magistrate, the other question which the court
I had to satisfy itself was in respect of the arrest — was it legal? Habeas corpus applications and cases have a tremendous wealth of information and legal principles which I need not delve into here. Suffice if the public prosecutor and the police refer to them for guidance.

Woman constable Hamidah bte Abdul Rahman was cross-examined in court. She admitted that she did not inform the respondent of the reasons for her arrest except to say that the arrest was in connection with Report 6191/94. She added that she did not mention the offence. The interesting part was that she did not know what the report was about or when it was lodged or by whom. It was ASP Latt Mazura who instructed her to effect the arrest. In answer to several other questions she merely answered 'tak concentrate', 'tak dengar', 'tak setuju'. I sympathize with her as she was instructed to do something to which she was not privy. She is from 'cawangan' whereas ASP Latt Mazura was from Pasukan C who had direct responsibility. At time when Hamidah attempted to effect the arrest of the respondent (whether or not there is an arrest is a question of fact: *Jayaraman & Ors v PP* [1982] 2 MLJ 273 at col 1G; see also s 15 of the CPC and *PP v Kok Khee* [1963] 29 MLJ 362), the 'boss' who knew of the matter was DSP Tajuiddin who then 'was inside his car and about to leave the court'. Lt Col Ahmad bin Daud who is 'an officer and a gentleman' of the Army Legal Branch averred that Hamidah, when asked the reason for the arrest replied, 'It is up to you to ask Boss' (ie Tajuiddin). The colonel also gave evidence in court but the DPP did not cross-examine him at all. By *Christie & Anor v Leachinsky* [1947] 1 All ER 567, any arrest without warrant requires the policeman (or policewoman) to 'inform the person arrested of the true grounds of arrest'. I need add here that by art 5(3) of our Federal Constitution any person who is arrested must ('shall') be informed as soon as may be of the grounds of his arrest. See Archbold, *Criminal Pleading, Evidence and Practice* (14th Ed) at p 1339 regarding arrests. Ordinary language is sufficient: *R v Telfer* (1976) Crim LR 562. See also *Abbassy v Commissioner of Police of the Metropolis* [1990] 1 All ER 193; [1990] 1 WLR 385. From the evidence before this court, this was not done in today's case.

*Could the police have arrested the respondent?*

Yusuf Khan bin Ghows Khan esq, of counsel for the respondent, argued that by s 23(1) of the CPC the respondent should not have been arrested as her name or that of her husband was not mentioned in the report and that the grounds of her arrest must relate to an offence. It was the respondent who chided that 'if indeed I had been unco-operative ... failed to turn up for questioning ... police are at liberty to obtain a warrant of arrest against me under s 111 of the CPC'. This is true only to the extent where the police had issued an order in writing for her attendance and she refused, in which case such refusal will then be reported to a magistrate who may issue a warrant.

As I have indicated above, in cases where the offence is seizable then anyone against whom a reasonable complaint has been made or *credible information has been received* or *even where reasonable suspicion exists* can be arrested without any order from a magistrate or without any warrant: s 23(1)(a). From the above, it is manifest that the police do not have to obtain a warrant before they arrest any person (citizen or foreigner) whom they suspect has committed a seizable offence. ASP Latt Mazura could

A have effected the arrest herself or sent a deputy to do so provided the rank of the deputy does not transgress s 108(iii) of the CPC *and provided further she had good and sufficient grounds*, eg if the ASP had acted as provided under s 51 of the CPC. See s 105 of the CPC but arrest must be properly done. See *Chapman v DPP* (1989) 89 Cr App R 190 and *Kynaston v DPP* (1988) 87 Cr App R 200.

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Obviously the woman corporal was not a wise choice under these circumstances. Sections 108(iii), 109(i), 110 of the CPC seem to confine the exercise of powers to 'Any police officer not below the rank of Sergeant ...'. In this respect if there was credible information or reasonable suspicion against the respondent of an offence which is seizable, then obviously the C law allows the police to arrest. But I am unable to agree that the law allows any arrest based on her status as wife or anger of the police merely because the respondent did not co-operate. Most people may understand the anger that was built up but the police must calmly appreciate that in the final analysis their success against crime can only be the results of gathering D relevant intelligence, the proper exercise of their mental faculty and powers of deduction and making sound decisions in time. There must always be some lawful basis for arrest and detention including a clear nexus between the suspect and the offence.

*Legal principles*

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I agree with the Privy Council's judgment in *Shaaban & Anor v Chong Fook Kam & Ors* [1969] 2 MLJ 219 that, '... it is unnecessary for the police to show there was prima facie proof of the offence'. This is supported by the CPC which allows up to 15 days after arrest for investigation. I am of the opinion that at the s 117 stage, it is sufficient for the court to extend F the detention of the accused, provided the entries in the diary (which I have described above) or a copy as described in s 119 of the CPC is transmitted to the court. (See *Hashim bin Saud v Yahaya bin Hashim & Anor* [1977] 1 MLJ 259. Was it the same police inspector who was involved in *Ramli bin Salleh v Inspector Yahya bin Hashim* [1973] 1 MLJ 54?)

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I am inclined towards the observation in the *Magistrates' Court Handbook* (published by the Malayan Law Journal) at pp 91–92 that:

> Very real problems and conflicts arise in situations where the prosecution comes before the court wishing to remand a suspect to enable them to complete their investigations. In such instances the magistrate should be well-reminded to ensure that an accused is not remanded and refused bail simply to give him a taste of imprisonment in advance of his trial or to achieve what may be termed 'de facto' imprisonment to teach him a lesson so to speak.

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And for this reason the CPC at s 117(3) requires the magistrate to record I his reasons.

It is not disputed that the registrar when exercising her powers under s 117 did so as an inferior criminal court (s 323(1) of the CPC) nor that counsel was excluded from the remand proceedings. See *Saul Hamid v PP*

[1987] 2 MLJ 736. In fact Edgar Joseph Jr J (as his Lordship then was) said at p 739:

> As for the risk of premature disclosure to the defence, it is obvious that under s 117, a magistrate may, on the mere perusal of the entries in the police diary relating to the case, authorize the detention of the arrested person in custody for a term not exceeding 15 days in the whole. [Syed Agil Barakbah J in *Ramli bin Salleh v Inspector Yahya bin Hashim* [1973] 1 MLJ 55 cautioned magistrates that they should not allow the full period as a matter of course but should weigh the seriousness of the offence and determine whether a shorter period should be sufficient to enable police to complete the investigation.] Moreover, the arrested person cannot call for or inspect the diary unless the police officer concerned refers to it for purposes of ss 159 or 160 of the Evidence Act 1950 [see *Gun Kim Luu v PP* [1961] MLJ 35 and s 119(2) of the CPC], in which case, only such parts of it as are referred to shall be shown to the arrested person: s 119. Consequently, subject to the very limited exceptions mentioned, neither the arrested person nor his counsel (if present) would have any means of knowing of the entries in the diary unless, of course, the magistrate or the police officer makes disclosure thereof during the proceedings — events I would regard as most unlikely.

The learned DPP urged the court that under the law, 'when an accused person is before court, the court has jurisdiction to try him notwithstanding the fact that his arrest may have been illegal' — *Saw Kim Hai v R* [1956] MLJ 21 was cited. This does not appear to be applicable as the registrar was not 'trying' the respondent at the time. Section 117(2) of the CPC. See also *Maja Anak Kus v PP* [1985] 1 MLJ 311.

*Factors for consideration before arrest*

The actions taken in this case reflect poorly on the officials who should know better the proper execution of their duties in a professional manner.

It is true that:

> The interest of justice is as important as the interest of arrested persons and it is well known that criminal elements are deterred most of all by the certainty of detection, arrest and punishment (per Suffian LP in *Ooi Ah Phua v Officer-in-Charge, Criminal Investigation, Kedah/Perlis* [1975] 2 MLJ 198).

I am in agreement with the learned DPP that the third principle in *Christie & Anor v Leachinsky* [1947] 1 All ER 567 is that:

> The requirement that the person arrested should be informed of the reason why he is seized naturally does not exist if the circumstances are such that he must know the general nature of the alleged offence for which he is detained.

The learned DPP sought to advance these reasons, eg the respondent knew of her husband's arrest and charge in court, her visit to the police headquarters in the same connection to recover/discover share scrips and cash, and her avoidance of the police thereafter with the view of proving that the police action was legal thereunder. If indeed it was all that simple

then why was it so hard for the authorities to first inform the respondent of the reasons? As can be seen from the evidence, the arresting officer did not know of the reasons.

It is not clear whether she knew of the general nature of the offence she (not her husband) was involved in at the time. It is a travesty of justice to allow a deficient arrest to be converted into one of respectability and legality.

*Observations*

The learned DPP kindly explained that only applications under s 117 which the court approves are registered and filed in the court records. Where, however, the court declined or refused to authorize the further remand of the accused, the court merely recorded the order on the copy of the 'diary' and returned that copy to the police.

This is bad practice and should not be encouraged to continue. Henceforth each application in duplicate should be registered on the date it is filed and recorded in serial number (eg one file for one police district or police station, depending on its size and the frequency of applications) and consecutively for each year. All court records and documents, eg diary transmitted and notes of proceedings in each case must remain and be maintained in the court whether the court (magistrate or registrar) approves the s 117 application or disapproves and rejects it. It shall be the duty of the police officer(s) to report back to the magistrate the date and time the accused (or remanded) person is released or granted bail in the form specified in the Registrar's Circular No 1 of 1979 a copy of which had been distributed to the Ketua Polis Negara, all sessions and magistrates' courts, district officers, senior assistant registrars and DPPs. Sadly, this circular seems to be more honoured by its non-observance. Nevertheless, the magistrate should KIV his file to the relevant date of each order and if the release order is *not* received from the OCPD (can s 58 of the CPC then come into operation?), the magistrate must inquire into the matter. Furthermore, the magistrate must send up a monthly return of all such orders and inquiries to the High Court judge.

*Conclusion*

Taking into consideration the actions and principles of law applicable in this case, I am of the opinion that the arrest of the respondent was not effected in accordance with the total requirements of law and that the registrar's order was correct and proper as the police failed or neglected to provide a copy of the diary specified under the CPC.

I therefore see no necessity to revise that order.

*Application dismissed.*

Reported by Anne Khoo